DA 00-2018

# Before the Federal Communications Commission Washington, D.C. 20554

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## **NOTICE OF PROPOSED RULE MAKING**

Adopted: August 23, 2000; Released: September 1, 2000

Comment Date: October 23, 2000

Reply Comment Date: November 7, 2000

By the Chief, Allocations Branch:

- 1. Before the Commission for consideration is a multiple docket <u>Notice of Proposed Rule Making</u> setting forth separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules to specify a new community of license. Each petitioner has stated that it will apply for its requested channel, if allotted to the specified community. We believe that each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.
- 2. Each proposal is filed in accordance with the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990).

Moreover, each proponent contends that its proposal would result in a preferential arrangement of allotments consistent with the FM allotment priorities set forth in the Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 91 (1982).<sup>1</sup>

3. This is a multiple docket <u>Notice of Proposed Rule Making</u> issued in response to a Commission <u>Public Notice</u> released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single <u>Notice of Proposed Rule Making</u>. Each proposal has its own docket and rule making number and the Commission's Reference Center will maintain a separate file for each docket. As discussed in the <u>Public Notice</u>, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions for rule making by avoiding duplicative actions. We request comments and/or counterproposals to the following proposals:

## A. MM Docket No. 00-159; RM-9889

**Petitioner:** Legend Communications for Wyoming, L.L.C.<sup>2</sup>

c/o Lee W. Shubert, Esq. Rosenman & Colin, LLP 805 15<sup>th</sup> Street, N.W., Washington, D.C. 20005-2212

**Proposal:** Substitution of Channel 252C1 for Channel 252C2 at Thermopolis, Wyoming, the reallotment of Channel 252C1 from Thermopolis to Story, Wyoming, and the modification of petitioner's construction permit (File No. BPH-19971021MC) accordingly.<sup>3</sup> Petitioner states that the

<sup>&</sup>lt;sup>1</sup> The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight given to priorities (2) and (3).]

<sup>&</sup>lt;sup>2</sup> On May 31, 2000, the construction permit for Channel 252C2 at Thermopolis was assigned from Idaho Broadcasting Consortium, Inc. to Legend Communications for Wyoming, L.L.C., and was consummated on August 1, 2000.

<sup>&</sup>lt;sup>3</sup>In support of its proposal, petitioner states that Story is an unincorporated city listed in the 2000 Rand McNally Road Atlas and is attributed with a population of 700 persons. It is located in Sheridan County and has its own zip code (82842), telephone exchange (683) a post office, and a library. Although Story has no local government, it is not a suburb of any other city. Story is served by its own local volunteer fire department and provides it own sewer and water services to its residents. Story residents and tourists support at least three hotel/motels, a community church, doctors, and an elementary school (which is part of the Sheridan County school district). It is adjacent to historic sites such as Fort Phil Kearney, Fetterman Battlefield and the Box Wagon Fight and draws numerous visitors from these attractions. Additionally, Story is home to an important fish hatchery, golf course, myriad retail establishments, civic groups and other manufacturing type businesses, including Story Women's

proposed reallotment would provide a first local aural transmission service to Story, without depriving Thermopolis (population 3,247) of its sole local service, whereas Stations KTHE(AM) and KDNO(FM) would remain licensed to the community. Since the station is unbuilt, petitioner further states that the reallotment of Channel 252C1 to Thermpolis will not result in the loss of an existing service. Moreover, the current 60 dBu service contour for Channel 252C2 at Thermopolis would encompass 8,285 square kilometers and approximately 20,330 persons. The predicted 60 dBu contour for Channel 252C1 at Story would encompass 16,369 square kilometers and approximately 29,456 persons, a net service gain of 9,126 persons.

Further, we recognize that a construction permit has been issued for Channel 252C2 at Thermopolis, but the facility has not been built. However, since petitioner seeks to relocate its transmitter site, there will be potential gain and loss areas. Although petitioner has provided some gain and loss area data, the petitioner is requested to provide a study which not only identifies the any gray or white areas, but also the reception services that are now available within the gain and loss areas. Since the reallotment of Channel 252C1 to Story would not provide a 70 dBu signal over 50% or more of an urbanized area, a Tuck analysis is not applicable. Neither Thermopolis nor Story is located in or near an urbanized area. Lastly, petitioner is requested to provide any overall public interest benefits that would be derived from the reallotment.

Club, The Story Lion's Club, a general store, a deli, beauty parlors, auto repair shops and attorneys.

<sup>&</sup>lt;sup>4</sup> White area refers to an area in which there are no full-time aural reception services, and gray area refers to an area in which there is only one full-time transmission service.

<sup>&</sup>lt;sup>5</sup> Reception services are those aural services that can be received within a given geographical area, including full-time AM, as well as FM commercial stations. In determining reception service provided by an FM station, the area of service circumscribed by the station's 1.0 mV/m signal contour, assuming maximum facilities for the class of station, except for Class C, should be considered. For the latter class, the minimum or existing Class C facilities, whichever is greater, should be used in the study. The area of reception service for full-time AM stations is defined according to whether it is a clear channel Class AM station or another class of full-time AM station. For a clear channel Class A station, the reception area is defined by a station's 0.5 mV/m groundwave contour, based on its licensed facilities. For all other classes of full-time AM stations, reception service is defined as that service received within a station's nighttime interference-free contour. For purposes of determining the availability of aural services in the areas affected by the change of community proposal, the petitioner should include in its study the reception services provided by all relevant AM and FM stations. Reception areas that receive at least five radio services are considered to be well-served.

<sup>&</sup>lt;sup>6</sup> See Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995); Huntington Broadcasting Co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951); RKO General, Inc., 5 FCC Rcd 3222 (1990); and Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).

Community	<u>Present</u>	Proposed
Thermopolis, Wyoming	252C2, 269C1	269C1
Story, Wyoming		252C1

Coordinates: 44-34-28 NL and 106-52-14 WL

Additional Information: This allotment requirements a site restriction of 1.2 kilometers (0.8 miles) east at petitioner's requested site. As requested, we propose to modify the station's construction permit to specify operation on Channel 252C1 at Story, Wyoming, as its new community of license. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 252C1 at Story, Wyoming, or require petitioner to demonstrate the availability of an equivalent class channel for use by such parties.

FCC Contact: Sharon P. McDonald (202) 418-2180

### B. Docket No. 00-160; RM-9928

Petitioners: Kaskaskia Broadcasting, Inc. and Miller Communications, Inc. <sup>7</sup>

c/o Patricia M. Chuh Pepper & Corazzini, L.L.P. 1176 K Street, N.W., Suite 200 Washington, D.C. 20006

**Proposal:** Reallot Channel 265A from Pana to Macon, Illinois, and modify Station WEGY(FM)'s license accordingly. Additionally, reallot Channel 232A from Taylorville to Pana, Illinois, and modify

<sup>&</sup>lt;sup>7</sup> We note that Randal J. Miller holds a 100% ownership interest in Kaskaskia Broadcasting, Inc. and holds a 70% ownership interest in Miller Communications, Inc.

<sup>&</sup>lt;sup>8</sup> Petitioners state that Macon is an incorporated community with a 1990 U.S. Census population of 1,282 persons. Additionally, Macon is self-governing and has a mayor and village board. Macon also has its own fire department, water, sewer, and garbage services, as well as its own telephone prefix (768), post office and zip code. There are a number of churches, organizations, and businesses that serve the Macon community, including many incorporating "Macon" in their names, such as, Macon AG Service, Macon Motel, Macon Motors, Macon Night Own, Inc., Macon Presbyterian Church, Macon Speedway, Macon U-Tan, Macon United Methodist Church, Macon Waves, Macon County Archery, Main Street Carry Out Restaurant, and Main Attraction Hair Salon.

Station WMKR(FM)'s license accordingly. Petitioners state that the reallotment of Channel 265A to Macon would provide the community with its first local aural transmission service, without depriving Pana of its sole local service, since Station WMKR(FM) would be allotted as a replacement service. Additionally, the reallotment of Channel 232A from Taylorville to Pana (population 5,796), would not deprive Taylorville (population 11,133) of its sole local service, whereas Stations WQLZ(FM), WTIM(FM), and WIHM(AM) would remain licensed to the community. Since petitioners are proposing to change their transmitter sites, a gain and loss study is required, which was provided for both Stations WEGY(FM) and WMKR(FM). Moreover, since the allotment of Channel 265A at Macon and Channel 232A at Pana would not provide a 70 dBu signal over 50% or more of the Decatur Urbanized Area, a Tuck analysis is not applicable. Neither Pana, Taylorville nor Macon is located in an urbanized area. Petitioners are requested to provide any overall public interest benefits that would be derived from the reallotments.

Community	<u>Present</u>	<b>Proposed</b>
Pana, Illinois	265A	232A
Taylorville, Illinois	224B1, 232A, 247A	224B1, 247A
Macon, Illinois		265A

Coordinates: 39-22-56 NL and 89-12-56 WL (Channel 232A at Pana)

39-41-08 NL and 88-55-29 WL (Channel 265A at Macon)

Additional Information: The allotment of Channel 232A at Pana requires a site restriction of 11.7 kilometers (7.3 miles) west at Station WMKR(FM)'s requested site. Additionally, the allotment of Channel 265A at Macon requires a site restriction of 6.9 kilometers (4.3 miles) south at Station WEGY(FM)'s requested site. As requested, we propose to modify the Station's WMKR(FM)'s and WEGY(FM)'s licenses to specify operation on Channels 232A at Pana, Illinois and Channel 265A at Macon, Illinois, respectively. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 232A at Pana, Illinois, or for Channel 265A at Macon, Illinois.

FCC Contact: Sharon P. McDonald (202) 418-2180

## C. MM Docket No. 00-161; RM-9929

<sup>&</sup>lt;sup>9</sup>See Footnote 6, supra.

Petitioner: M. Kent Frandsen

c/o Ellen Masters Shaw Pittman 2300 N Street, N.W. Washington, D.C. 20037

Proposal: Reallot Channel 256C1 from Fort Bridger, Wyoming to Woodruff, Utah, and modify Station KNYN(FM)'s construction permit accordingly. Petitioner states that the reallotment of Channel 256C1 at Woodruff would provide the community with its first local aural transmission service, whereas Fort Bridger (population 200) is not an incorporated community and has no elements of a community. Petitioner further states that since the station is unbuilt, the proposed reallotment of Channel 256C1 would not result in the loss of an existing service. A gain and loss study is not required because petitioner does not seek to relocate its transmitter site. Further, since the reallotment of Channel 256C1 to Woodruff would not provide a 70 dBu signal over 50% or more of an urbanized area, a Tuck analysis is not applicable. Neither Fort Bridger nor Woodruff is located in or near an urbanized area. Lastly, petitioner is required to provide any overall public interest benefits that would be derived from the reallotment.

<b>Community</b>	<u>Present</u>	<b>Proposed</b>
Fort Bridger, Wyoming	256C1	
Woodruff, Utah		256C1

**Coordinates:** 41-21-10 NL and 110-54-26 WL

Additional Information: This allotment requires a site restriction of 28.2 kilometers (17.5 miles) southeast at petitioner's presently authorized site. As requested, we propose to modify Station KNYN(FM)'s construction permit to specify operation on Channel 256C1 at Woodruff, Utah, as its

<sup>&</sup>lt;sup>10</sup> In support of his proposal, petitioner states that Woodruff is defined as a town and is located in Rich County (population 1,725). It is listed in the 1990 U.S. Census with a population of 135 persons. Woodruff has its own local government made up of a mayor and city council. Woodruff has it own post office and zip code. It has it own local fire department, several local businesses and a Church of Jesus Christ of Latter Day Saints, which has close to 500 members. Woodruff also hosts a parade and rodeo every Fourth of July, attracting large crowds from surrounding areas.

<sup>&</sup>lt;sup>11</sup>See Footnote 6, supra.

new community of license. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 256C1 at Woodruff, Utah.

## FCC Contact: Sharon P. McDonald (202) 418-2180

- 4. Comments, reply comments, counterproposals and other pleadings filed in response to this multiple docket <u>Notice of Proposed Rule Making</u> should reference <u>only</u> the specific docket to which the filing pertains. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.
- 5. Interested parties may file comments on or before **October 23, 2000**, and reply comments on or before **November 7, 2000**, and are advised to read the Appendix for the proper procedure. Additionally, a copy of any filing should be served on the petitioner listed for the particular docket.
- 6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules. 46 FR 11549 (February 9, 1981).
- 7. For further information concerning a proceeding listed above, contact the FCC contact listed for that proceeding. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no <u>ex parte</u> presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An <u>ex parte</u> presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner

constitutes an <u>ex parte</u> presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an <u>ex parte</u> presentation and shall not be considered in the proceeding.

## FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos Chief, Allocations Branch Policy and Rules Division Mass Media Bureau

Attachment: Appendix

#### **APPENDIX**

- 1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g)and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.
- 2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.
- 3. <u>Cut-off protection</u>. The following procedures will govern the consideration of filings in this proceeding.
- (a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).
- (b) With respect to petitions for rule making which conflict with the proposals in this <u>Notice</u>, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.
- (c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.
- 4. <u>Comments and Reply Comments; Service</u>. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the <u>Notice of Proposed Rule Making</u> to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall

be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W.; TW-A325, Washington, D.C. 20554.

- 5. <u>Number of Copies</u>. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.
- 6. <u>Public Inspection of Filings</u>. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Information Reference Center (Room CY-A257) at its headquarters, 445 12<sup>th</sup> Street, S.W., Washington D.C. 20554.